

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

What, if any, is the nature and extent of claimant's injury and/or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record and considered the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant suffered accidental injury on April 21, 1994, when she slipped and fell on respondent's premises and each and every day thereafter through January 31, 1995. This is not in contention. The primary dispute in this matter revolves around the termination of claimant's employment with respondent. Claimant introduced into evidence a floor plan of the respondent's plant in order to properly identify the location of the slip and fall. Early on in the litigation a dispute arose regarding whether claimant's accidental injury occurred on respondent's premises. Claimant used the diagram in order to resolve this dispute. When respondent's representatives discovered claimant had introduced the report, after first having provided same to her attorney, they became upset and claimant was ultimately terminated as a result of this infraction.

Respondent argues that the logic of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995), should be invoked. In Foulk, the Court of Appeals declared that the Workers Compensation Act should not be construed to award benefits to a worker refusing a proper job which the worker has the ability to perform. In Foulk, the claimant refused employment which the claimant had the ability to perform and voluntarily removed herself from the labor market without good reason. The Appeals Board finds that the logic of Foulk is not applicable to this case. Claimant's justification for entering the exhibit into evidence stems from the dispute regarding whether claimant's injury occurred on respondent's premises. A legitimate reason for entering the diagram was to show the specific location of the injury.

Respondent's objection, while noted, appears to have been somewhat of an over-reaction. The floor plan of respondent's plant was not copyrighted or protected by any laws of the United States or the State of Kansas. If this floor plan diagram were of such importance to respondent the Appeals Board questions why additional legal protections were not taken in order to preserve its integrity from the general public.

The Appeals Board finds that the circumstances leading up to claimant's termination are not comparable to the circumstances in Foulk and therefore finds that, under K.S.A. 44-510e, claimant would be entitled to a work disability.

The parties spent no time at oral argument arguing work disability and respondent at no place in its brief argued the work disability awarded by Judge Clark. The Appeals Board adopts the findings set out by Judge Clark in awarding claimant a work disability of 85 percent.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated June 25, 1996, should be, and hereby is, affirmed, in favor of the claimant, Ileana A. Blackmon, and against the respondent, CPI Corporation, and its insurance carrier, Fireman's Fund Insurance Company, for accidental injury occurring through January 31, 1995, for an 85 percent permanent partial whole body work disability.

Claimant is entitled to 19 weeks temporary total disability compensation at the rate of \$208.88 per week totaling \$3,968.72 followed by 349.35 weeks permanent partial disability at the rate of \$208.88 per week totaling \$72,972.23 for an 85% permanent partial general bodily disability making the total award of \$76,940.95.

As of December 18, 1996, there would be due and owing to claimant 19 weeks temporary total disability compensation at the rate of \$208.88 per week in the sum of \$3,968.72 followed by 79.14 weeks permanent partial disability compensation at the rate of \$208.88 in the sum of \$16,530.76 for a total due and owing of \$20,499.48 which is ordered paid in one lump sum minus amounts previously paid. Thereafter, the remaining balance in the amount of \$56,441.47 shall be paid at the rate of \$208.88 per week for 270.21 weeks until fully paid or until further order of the director.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed to the respondent to be paid as follows:

Kelley, York & Associates, Ltd.

Deposition of Ileana A. Blackmon	\$350.24
Deposition of Ann Marie Thelen	\$196.21
Deposition of Jill Diane Lincoln	\$450.01
Deposition of Jill Lincoln	\$232.34

Barber & Associates

Transcript of preliminary hearing	\$139.15
Court Reporting Services	
Deposition of James Molski	\$113.40
Deposition of Jane Drazek, M.D.	\$187.00
Deposition of Pedro Murati, M.D.	\$Unknown
Deposition of Ronald George Elkouri, D.P.M.	\$Unknown
Deposition of Jo Herdt	\$ 88.75
Ireland Court Reporting	
Transcript of regular hearing	\$243.00

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

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BOARD MEMBER

c: James P. Johnston, Wichita, KS  
Richard A. Boeckman, Great Bend, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director